In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 318

ROBERT C. HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 374 F.2d 871.

JURISDICTION

The judgment of the court of appeals was entered on March 22, 1967 (R. 140).[1] A petition for rehearing was denied on May 31, 1967 (Pet. App. B 6). The petition for a writ of certiorari was filed on June

---

[1] "R." refers to volume 1 of the 16-volume record. Volumes 2 through 16 are referred to herein as "Tr.".

30, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner, a former president of a corporation, had standing to move to suppress corporate records seized at the residence of another individual.

RULE INVOLVED

Rule 41(e) of the Federal Rules of Criminal Procedure provides in pertinent part:

> A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant * * *.

STATEMENT

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted under 26 counts of an indictment alleging mail fraud in connection with a scheme to collect "advance fees" from small businessmen upon false representations that his corporation could and would obtain loans for the businessmen (R. 2). He was given concurrent sentences of two years' imprisonment on each count, with eligibility for parole to be determined pursuant to 18 U.S.C. 4208(a)(2). The court of appeals affirmed (Pet. App. B; R. 140-142; 374 F.2d 871).

The government's evidence showed, in substance, that Inter-American Loan Service, Inc. (I.A.L.S.), organized and operated by petitioner as president and owner from April 1958 to March 1959, collected fees from would-be borrowers totalling some $85,000 (Tr. 1593) without securing a single loan for its clients (Tr. 693) or making a serious effort to do so (see, *e.g.*, Tr. 266, 678-684). The proof of mailings and of the fraudulent scheme was established through testimony of numerous victims (see, *e.g.*, Tr. 284-306) and employees, including salesmen recruited by petitioner to solicit clients (see Tr. 1009-1026; 1376-1409), and through the introduction of certain documents—including checks made payable to the corporation and corporate contracts, correspondence and other papers.

Prior to trial petitioner moved to suppress the corporate files and records of I.A.L.S. as evidence having been illegally seized from the Los Angeles residence of one Phyllis Hill (petitioner's sister-in-law) (R. 48; Tr. 114). At a hearing on the motion to suppress he testified that in March 1959, when I.A.L.S. ceased doing business (because of a "Desist and Refrain Order" issued by the California Commissioner of Corporations), he turned over the files of its clients to United Lenders Service, a partnership operated by his brother Leland Hill, who was also an officer of I.A.L.S., and one Scherief (Tr. 121-128, 135-136). The former Mrs. Leland (Phyllis) Hill testified that in July 1959, upon discovering that her husband had been taken into police custody in connection with Fresno, California, charges, she went

to the premises where United Lenders maintained offices. She was admitted after paying rent to the manager. She took files which she believed to belong to United Lenders to her residence. A few days thereafter she was visited by the Chief of Police of Selma, California, accompanied by a Los Angeles and a Fresno County representative. She testified that she delivered the files to them because they promised her in return that she could see her husband and that his bail would be reduced (Tr. 141-146).

Chief of Police Davis, of Selma, denied, however, that any promises or threats had been made to Mrs. Hill (Tr. 168). He testified that, in connection with the Fresno County investigation of petitioner, his brother and others, he had unsuccessfully sought I.A.L.S. records in Los Angeles pursuant to a search warrant secured in that county. Having been advised by petitioner's father of the location of the records (Tr. 169), he and two others appeared at the Leland Hill residence and informed Mrs. Hill that they had a warrant for "the records of the loan company" (Tr. 154). She replied that they did not need a search warrant, invited them in, obtained a key to a garage, which she then opened, and pointed out the records which they were to take (Tr. 151-165, 168). These records, after the disposition of charges against petitioner in Fresno County, were turned over to a federal postal inspector (see Tr. 132).[2]

---

[2] Some of the records were subsequently introduced into evidence at petitioner's federal trial.

During the course of petitioner's testimony at the hearing on the motion to suppress, the district judge inquired if petitioner was claiming that some of the records in question were "personal" as opposed to corporate records. Petitioner replied that this was so only "in a sense [of] an employee," and his counsel elaborated that "[w]e are making no contention that there were any personal files, with the idea of them being his personal property. They were the corporation's working records of an employee, as president" (Tr. 139-141). At the conclusion of the hearing the district judge, after commenting that he was "going to accept as true the complete testimony of Chief Davis," denied the motion to suppress on the specific ground that petitioner lacked standing to object to the introduction into evidence of corporate records (Pet. App. A). The court of appeals affirmed on the same ground (Pet. App. B 4-5; 374 F.2d at 872).

ARGUMENT

Both courts below properly concluded that petitioner lacked standing, as a "person aggrieved by an unlawful search and seizure," within the meaning of Rule 41(e), F.R. Crim. P., to seek suppression of the corporate records.[3]

---

[3] Although the court below did not pass on the issue, stating only that it "assume[d], but [did] not decide" that the files were obtained in a manner contrary to the Fourth Amendment (Pet. App. B 4), the evidence would in fact support a finding that there was no illegal search and seizure. It should be noted that the district court credited the testimony of Police Chief Davis, and not that of Mrs. Hill. Under his testi-

It has been long established that an individual doing business as a corporation may not vicariously assume and assert the corporation's rights under the Fourth Amendment. *Lagow* v. *United States*, 159 F.2d 245, 246 (C.A. 2), certiorari denied, 331 U.S. 858.[4] Nothing in this Court's decision in *Jones* v. *United States*, 362 U.S. 257, or any other decision, casts doubt upon the continuing validity of this principle when applied to the facts of the instant case. In *Jones*, which involved a prosecution for possession of heroin seized in an apartment in which the defendant was present, this Court, in order to resolve the dilemma posed when possession both confers standing and convicts of a crime, held that the defendant might move to suppress without the necessity for a preliminary showing of an interest in the premises searched or the property seized. The Court held alternatively that "[e]ven were this not a prosecu-

---

mony it would appear that there was in fact no search and that the seizure was consented to by the person in control of the premises. In addition, a search warrant, though not describing the premises where the files and records were ultimately found, had been obtained for the materials here seized.

[4] See also *United States* v. *White*, 322 U.S. 694, 698; *Wilson* v. *United States*, 221 U.S. 361, 376; *United States* v. *Guterma*, 272 F.2d 344, 346 (C.A. 2); *United States* v. *Goldberg*, 330 F.2d 30 (C.A. 3), certiorari denied, 377 U.S. 953; *Christianson* v. *United States*, 226 F.2d 646 (C.A. 8); *United States* v. *Culver*, 224 F. Supp. 419, 427 (D. Md.); *United States* v. *Friedman*, 166 F. Supp. 786, 789 (D.N.J.). Similarly, an individual has no Fifth Amendment privilege with respect to the production of the records of a corporation. *United States* v. *White*, 322 U.S. 694; *Wilson* v. *United States*, 221 U.S. 361; *Hale* v. *Henkel*, 201 U.S. 43.

tion turning on illicit possession," the fact that Jones was legitimately on the premises when the search occurred gave him a "legally requisite interest" therein to give him standing. 362 U.S. at 263. While Jones represents a liberalization of requirements necessary to challenge the legality of searches and seizures, none of the underlying considerations there found pertinent, nor any of the resultant implications of that decision, is significant under the facts of the instant case.[5] The crime here is not one of possession. Petitioner admittedly had no interest whatever in the premises searched; nor was he present at the time of the search (see Pet. App. B 5). Moreover, he had no interest in the property seized, possessory or otherwise. While he testified that he maintained the corporate books and records from April 1958 to

---

[5] What petitioner actually seeks here, as he candidly admits (see Pet. 10-14), is not an application of *Jones* or other precedents to the instant facts, but rather a sweeping extension of established principles which would wholly do away with any requirement of standing in search and seizure cases. Such a rule is far removed from the language and purpose of the Fourth Amendment, and would convert the personal right which that constitutional provision protects into an abstract, impersonal sort of privilege. No sound reason exists why one person should benefit because a wrong was committed by government officials against another, often wholly unrelated individual. Nor can any convincing showing be made, at least presently, that the rationale of the exclusionary rule is significantly impaired by the standing requirement. In any event, even should the Court be disposed to reconsider the viability of the standing requirement, the instant case would provide a poor vehicle for so doing, for a persuasive argument can be made here that the seizure involved was free from any illegality (see note 3, *supra*).

April 1959 (Tr. 123), he conceded that no personal files were involved (Tr. 141-142). He testified that he turned the files over to United Lenders in April 1959 for further processing (Tr. 128, 133-135). As far as he was concerned, the business was finished as of April 1959 (Tr. 124).

The *Jones* case has been interpreted as permitting a corporate officer in active charge of a corporate business to challenge a search where records were seized from the personal office of the officer. *Henzel* v. *United States*, 296 F.2d 650, 653 (C.A. 5).[6] It has also been relied upon to confer standing where seizures were made in business offices in the presence of the representative seeking to challenge the search. *Villano* v. *United States*, 310 F.2d 680 (C.A. 10); *De Forte* v. *Mancusi*, 36 U.S.L. Week 2022 (C.A. 2, June 28, 1967). Assuming *arguendo* the correctness of these decisions, they are plainly distinguishable from the factual situation here presented. In the instant case petitioner was not an active representative of the corporation; the search was not on corporate premises; and he was not present at the time. Under any accepted line of analysis, therefore, he had no standing to object to the search.[7] See *Wong Sun* v. *United States*, 371 U.S. 471, 492.

---

[6] The *Henzel* case by explicit language turns upon "its own facts" and represents no conflict with the holding below. See *Peel* v. *United States*, 316 F.2d 907, 909, 910 (C.A. 5), explaining and limiting *Henzel*.

[7] *United States* v. *Garrett*, 371 F.2d 296 (C.A. 7), in which certiorari was granted *sub nom. Simmons* v. *United*

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
JULIA P. COOPER,
Attorneys.

JULY 1967

States, on June 12, 1967, No. 55, 1967 Term, is, as a factual matter, wholly inapposite. No question of the continued viability of the standing requirement is raised in that case. Rather, one of the issues before the Court in *Simmons* is whether testimony given by one of the petitioners at a hearing on a motion to suppress was properly admitted into evidence at trial. Here, unlike there, no question is raised about a possible impairment of Fifth Amendment rights as a result of seeking to effectuate Fourth Amendment claims.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 270964 72